

MINUTES

WARRICK COUNTY AREA BOARD OF ZONING APPEALS
Regular meeting held in the Conference Meeting Room
Second Floor, Court House
Boonville, Indiana
February 28, 2007 at 6:00 P.M.

MEMBERS PRESENT: Larry Willis, Steve Gibson, Eric Stahl, Don Mottley and Terry Dayvolt.

Also present were: Sherri Rector, Executive Director and Secretary; Morrie Doll, Attorney; Susan Hilgeman, staff.

MEMBERS ABSENT: Richard Medcalf, and William McCune.

MINUTES:

Mrs. Rector stated there were a couple of corrections made to the minutes. She stated that on Page 2, Pear Street has been changed to Para Street and on Page 13 it stated that Mr. McCune had made a motion and it was changed to Mr. Medcalf.

Larry Willis asked if everyone understood the corrections and if any of the Board Members had any other corrections or additions. There being none Larry Willis stated he would entertain a motion. Steve Gibson made a motion to approve the minutes from the Area Board of Zoning Appeals meetings held on January 24, 2007. The motion was seconded by Eric Stahl and unanimously carried.

Mr. Willis explained the rules of procedure to the audience.

SPECIAL USES:

BZA-SU-06-28 – Applicant: Helen Geary Owners: Lee Geary, Helen Avery Geary, and Denise Lynn Avery.

Premises –Property located on the N side of Hadley Rd approximately 300’ W of the intersection formed by Hadley Rd. and Eames Station Rd., Owen Twp., *5800 Hadley Rd.*

Nature of Case – Applicant requests a Special Use, SU-24, for the district requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, Indiana, to allow a dog kennel not to exceed 30 dogs in an “A” Agriculture Zoning District. *Advertised in the Boonville Standard on December 7, 2006. Continued from December 18th and January 10th meetings.*

Helen Geary approached the podium.

Mr. Willis asked the Executive Director for a staff report.

Mrs. Rector stated they do have all the return receipts as they did from the last meeting and this application was continued for Mrs. Geary to come into contact with the Health Department, Animal Control and the Zoning inspector to make sure she was in compliance with all other departments. She stated that as of this time she has no response back from the Health Department. She stated that the Board has copies of pictures in their folder from the Zoning Inspector. She stated there still are some items on the property however it seems that the automobiles that were there previously have been removed or licensed. She stated in the Board’s packets they have a report from the Warrick County Animal Control from Samuel Roach the Warrick County Superintendent of the Highway Department and a supervisor over the Warrick County Animal Control. She stated in his letter dated today he states there are five different items that Mr. & Mrs. Geary are not in compliance with the Animal Control ordinance. She asked the Chairman if he wanted her to read them.

Mr. Willis stated the Board Members have copies in their packets so reading each one is not necessary.

Mrs. Rector stated that Mrs. Geary stated at the last meeting that she was proposing to build a shelter for the animals. Mrs. Rector stated that the board instructed her to bring in a plot plan showing the proposed structures that she would be doing and at this time she has not submitted any new plot plans from the one that was submitted before.

Mrs. Geary stated that she didn’t know she was supposed to.

Mrs. Rector stated she was told that at the last meeting. She continued there are several letters of remonstrance and pictures of the condition of the animals after they were taken to a pet adoption agency in the Board’s packets.

Mr. Willis asked the petitioner if she had anything to add.

Mrs. Geary stated she has tried to do everything she was told to do except the new plot plan. She stated she doesn’t know exactly how she intends to build the buildings right now. She stated that she would like to know what the things are that she’s in violation of with the Animal Control.

Mrs. Rector stated that she would read her the letter. (Copy on file)

Mrs. Geary stated she would like to know when the Animal Control came up to her property. She stated she hasn’t seen them because they were supposed to catch the feral cats and take the beagles and two or three of the other dogs that the Humane Society didn’t think were worth enough to take in and take care of.

Mrs. Rector stated that enclosed in the Board’s packets are statements from the Animal Control Officers from Tim Osha and from Ken Johns. She stated one inspection was done Monday October 25th & 26th, 2006. She stated that these were from the initial inspection.

Mrs. Geary stated yes and there again he was supposed to come back up there. She stated she asked him to tell her what they wanted her to do and he never did show up. She stated she can’t do what she’s not specifically told to do. She stated that now that the weather is warmer, the pens are all coming down. She stated she has no use for them right now. She stated she has a few beagles left and four house dogs. She asked what she is supposed to do with those dogs. She stated that Animal Control won’t come up there and get them; the Humane Society sure doesn’t want them.

Mr. William Geary approached the podium. He stated that you can’t take a dog down to the dog pen because he keeps it locked up. He stated that you can’t even get to the dog pound down here. He stated why doesn’t he come out and do his damn job.

Mr. Willis stated for Mr. Geary to watch his language. He stated the Planning Commission has no jurisdiction over the County Animal Control Officer. He stated that the Board is here this evening to make a determination on whether you all may have a dog kennel or not. He stated that they’re not here to judge whether someone is doing their job or not.

Mr. Geary stated he doesn’t think anybody is and left the room.

Mrs. Geary stated she thought this was just for the variance. She stated if she goes ahead and builds those buildings she still won’t get her variance she guarantees it.

Mr. Willis stated that she doesn't know if she will or not but if you don't have a plan on what you are going to do, some kind of rendering of what its going to look like or what she wants the end result to be, the Board has a hard time making a decision whether to give you the use that you want or not.

Mrs. Geary stated that does make sense. She stated that its not that you want her to build them right now, they want her to say how she's going to set it up. She stated she doesn't even know what size she wants yet.

Mrs. Rector stated that she is asking for a Special Use, not a variance, a Special Use to allow a kennel and part of that application is a plot plan showing all existing structures and any proposed structures. She stated that that's why they told her at the last meeting if you're building a shelter she needs to submit a new plot plan showing those structures. She stated that that is what the Board asked her to do.

Mrs. Geary stated she didn't understand that.

Mrs. Rector stated that right now the only thing they can act on is what exists because that is all she has submitted.

Mrs. Geary stated the weather is getting warmer, all the pens are coming down she just hasn't had time to do it. She stated she's got Bonnie Harris working on the septic system.

Mrs. Rector asked if she obtained a new septic permit from the Health Department.

Mrs. Geary stated that she hadn't gotten that far yet.

Mrs. Rector asked if the Health Department had been out to her home.

Mrs. Geary stated yes but she wasn't up and her daughter was told not to let anyone nose around.

Mrs. Rector stated so they were not allowed to do an inspection.

Mrs. Geary stated that she told them to come back when she was up. She stated that most everybody she's dealing with knows she works third shift. She asked the Board how they would like it if she came knocking on their doors about 1:00 in the morning, that's basically what it is to her.

Mr. Willis stated that he appreciates that she has gainful employment, on the other hand when the inspectors work during the day they have to come during their normal work hours and Mrs. Geary is the one who is asking for the Special Use so she would have to accommodate the inspectors at their time.

Mrs. Geary stated that they don't have to come first thing in the morning; she goes to bed as soon as she gets home. She stated they can at least wait until noon to come out.

Mr. Willis stated that he doesn't know what work hours they have but normally people who go to work for the county go to work somewhere between 6 and 8 o'clock in the morning and work until 3 to 5 o'clock in the afternoon.

Mrs. Geary stated they should call her and set a time and say they're going to be out there at whatever time in the morning.

Mr. Willis stated that maybe she should call them and set an appointment and see if they can work in her appointment schedule. He asked if she had anything else to add.

Mrs. Geary stated no just what is she going to do with those animals. She stated she can't have but four dogs so what is she supposed to do with them. She stated she needs an answer.

Mr. Willis stated that he believes the ordinance states that you can't have four or more weaned dogs which would mean you would only be allowed to have three if he understands correctly.

Mrs. Geary stated she thought it was four dogs.

Mrs. Rector stated four or more dogs constitute a kennel.

Mrs. Geary stated that she'll have to take another one out and shoot it. She asked what she was going to do with the other dogs.

Mr. Willis stated that they're not here to make that decision about what she's supposed to do with her own property.

Mrs. Geary stated that they've caused it.

Mr. Willis stated the Board can't really answer that question for her.

Mrs. Geary stated that if the people who were supposed to be doing their jobs like Animal Control, they used to have cages down there you can put them in but they don't have that anymore and he's never there and won't answer the telephone.

Mr. Willis stated that is another department they have no control over. He stated the Board is strictly here for land use and that is all the Board is here for.

Mrs. Geary stated that was very convenient.

Mr. Willis asked if Mrs. Geary had anything to add.

Mrs. Geary stated no and started to leave the room.

Mr. Willis asked Mrs. Geary if she was leaving.

Mrs. Geary stated yes, she has important things to do. She stated the Board isn't going to give her the Special Use no matter what type of buildings she builds out there.

Mr. Willis stated to let the record reflect that the applicant has left the meeting room. He asked if there were any remonstrators for this petition.

Leanne Garbers McAnulty approached the podium. She stated she is an attorney and a member of the Board of Directors for the Warrick Pet Adoption Center and if Mrs. Geary was still here she would like to tell her that we would accept her animals and she hopes she doesn't shoot them because they will take each and every one of them if given the opportunity. She stated she will briefly address some of this because Mr. Roach's letter has covered most of the items she was going to cover. She stated as you know Mrs. Geary has requested an SU-24 Special Use designation. She stated there are a couple of reasons that they think it is not appropriate that she be granted a Special Use permit. She stated first of all the SU-24 is not the appropriate Special Use permit for Mrs. Geary as it is for a kennel only with no associated businesses. She stated her understanding is that she breeds dogs and raises them as a commercial operation and sells them. She stated that that is a concern for them that that's not the appropriate permit for her and second but most importantly, she doesn't think that Mrs. Geary can meet the BZA's six criteria for a Special Use designation. She stated in particular number 4 is the most troubling; whether adequate and appropriate facilities will be provided for the proper operation of the Special Use and the Board has the pictures before them, they've seen that

and have probably heard on the news that they were contacted at one point by the media in late December and asked to investigate a consumer complaint about a sick puppy that was purchased from Mrs. Geary. She stated they immediately contacted Animal Control with whom they work often with for rescues of abandoned and neglected animals. She stated that Animal Control went there, observed the conditions and took in about 30 to 40 animals which were then signed over to the Warrick Pet Adoption Center. She stated they had several representatives there who observed the conditions and the Board can see those in the pictures. She stated that a lot of their complaints were the same as the ones Mr. Roach raised. She stated firstly the mud; there's no place for the animals to have a warm, dry shelter and its apparently compromising their immune system because every dog they took in had at least one or two parasites. She stated the Adoption Center has spent somewhere over \$12,000 medicating the animals and just cleaning them up. She stated some of the animals required multiple baths, de-worming, every single one of them had something. She stated they are all fine now and have been adopted out. She stated there are a few still under treatment but they are all spoken for at this point. She stated she has reserved space to accept the remainder of Mrs. Geary's animals if she will sign those over to them voluntarily or if she will allow Animal Control to take those animals from her, the Adoption Center could accept those tomorrow. She stated that she's a little bit concerned about Mrs. Geary's comment about the pens coming down seeing that the animals don't have a whole lot of shelter right now. She stated it sounds to her they're going to have even less shelter so she's a little bit concerned that some immediate action needs to be taken. She stated that Mr. Roach mentioned in his letter, the Animal Control Ordinance 1992.2.5: Shelter from Weather, defined as a sanitary manner free from the accumulation of mud and feces, potable drinking water and reasonable and necessary health care including the inoculations that are required by the County. She stated that those are her main concerns and why they believe the permit should be denied. She stated in addition to that, the pictures that are being seen are not isolated incidents that have just happened. She stated her understanding that approximately 10 years ago, in 1997, Animal Control was involved in and involved the Adoption Center in a raid on Mrs. Geary's property and accepted 100 animals, give or take, at that time and most of them were too sick to be saved at that point. She stated they received letters and calls and emails from people who have adopted from Mrs. Geary recently. She stated 4 years ago someone adopted a puppy that had ring worm so bad they had to immediately take them to the vet. She stated that puppy had round worm, hook worm you name it, that puppy had just about everything. She stated that the Pet Adoption Center are concerned that this is a pattern of bad behavior where Mrs. Geary is profiting from the sale of these dogs but she's not giving them the proper care and attention and they're completely dependent on her. She stated that is one of the main concerns for the Humane Society. She stated once again she'd like to say and get this message to Mrs. Geary that the Adoption Center will accept the animals at anytime any day just to please call them or Animal Control and they can take them in. She stated she encourages the Board to deny Mrs. Geary's application.

Mr. Willis asked for other remonstrators for or against this petition.

Diane Kelley approached the podium. She stated that she is the adopted parent of one of Mrs. Geary's dogs. She stated that's her dog on the screen right now or at least looks like her dog. She stated she knows in years past Mrs. Geary has had a problem with this. She stated her dog was in pretty bad shape. She stated she visited him the second week in January and he weighed right at 3 pounds. She stated he had ring worm, round worm, his skin was absolutely in terrible condition. She stated his eyes didn't have brightness to them. She stated it was heartbreaking and she adopted this little dog and had to turn around and leave him until he was able to come home. She stated that she brought him home a little too early because she wanted to love him and he's only 7 pounds now and a wiry little spitfire. She stated that she didn't see the condition of the animals when they were first taken to the Adoption Center, but she knows the outlay of moneys that they have put out to take care of these dogs and it's a continuing thing, it's not done yet. She stated she thinks it's a very bad decision to let this lady continue her practice in having a kennel. She stated she has been past her property and she wouldn't have a human being living there much less a little animal. She stated as an adopted parent that's all she wanted to say, that the Board needs to take a strong look at this before they rule on whether to give her a license or not.

Mr. Willis asked for other remonstrators for or against this petition. There being none he asked if the petitioner had come back in the room.

Mrs. Rector answered no.

Mr. Willis stated that the Board can not ask any questions of the petitioner so it is up to the Board now to make a decision with the information that they have in hand. Mr. Willis asked for any discussion.

Terry Dayvolt stated that some of the statements made by the Animal Control Officer and Mrs. Geary's statement that she was not financially responsible to even immunize these dogs in her own words are disturbing. He stated if she openly admits that and doesn't do what the Board says, he's not in favor of it.

Don Mottley asked Mr. Willis if the Board has to vote on these in the affirmative.

Mr. Willis stated no.

Mrs. Rector stated no, and if the Board does vote to deny the application then she would suggest that one of the conditions be a time period for her to comply with the three dog rule and an inspection should be done by the Animal Control Officer.

Don Mottley made a motion findings of fact be made as follows:

1. The septic site is not an appropriate location for the Use.
2. The Use as developed will adversely affect the surrounding area.
3. The Use will be a nuisance or serious hazard to vehicles, pedestrians or residents.
4. There are not adequate and appropriate facilities provided for proper operation of this Use.
5. The Use is not in harmony with the Warrick County Comprehensive Plan.
6. The Use is not essential or desirable to the public convenience and welfare.
7. Mrs. Geary will have 30 days to come into compliance and have the Animal Control Officer go out and check it 30 days from this day.

And the application be denied. Steve Gibson seconded and the motion unanimously carried.

Mrs. Rector asked if within the 30 days the inspection is done and she has not complied, then does the Board want it turned over to the attorney.

Mr. Mottley stated yes, he thinks that's what they've always done.

BZA-SU-07-03 – Applicant & Owner: Ubelhor Homes by Danny Ubelhor, Vice President.
Premises – Property located on the E side of Bell Rd. (W 850) approximately 150' N of the intersection formed by Bell Rd. and SR 66. Ohio Twp. 3922 Bell Rd. (Complete legal on file.)
Nature of Case – Applicant requests a Special Use, SU-08, from the district requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, Indiana, to allow a 9' x 16' electronic message board located in a "C-4" General Commercial Zoning District. *Advertised in the Boonville Standard on February 15, 2007.*

Kenny Ubelhor approached the podium.

Mr. Willis asked the Executive Director for a Staff Report.

Mrs. Rector stated they do have all the return receipts from certified mail to the adjacent property owners. She stated the applicant is requesting a Special Use to allow a 9' x 16' electronic message board on the existing office building. She stated the property is approximately 3 acres zoned "C-4" General Commercial. She stated it is currently Mr. Ubelhor's office and storage units. She stated the surrounding property is all zoned the same and platted for commercial subdivisions. She stated in the Comprehensive Zoning Ordinance it states that an on-premise sign means an identification, description, display or illustration which is affixed to, painted or represented directly on a building or land and which directs attention to product, person, business associated or offered as a primary use, business or activity on the premises. She stated Mr. Ubelhor did appear before the Planning Commission and it was discussed because Mr. Ubelhor has several different businesses, his home building business, apartments, storage units, paintball, etc. She stated the Planning

Commission agreed that he could advertise any of his businesses he owns but no one else’s on this message board. She stated any approval would be conditioned upon it only advertising Mr. Ubelhor’s business; otherwise it would be a billboard. She stated the application is in order.

Mr. Ubelhor asked the Executive Director if Danny submitted a picture of what exists. He stated what he is wanting to do is update the manual reader board to an electronic reader board. He stated it will be basically the same size board but instead of having to step outside and change the message they’d like to be able to do it inside. He stated these electronic boards are coming into existence all the time and it will be basically advertising Waterstone Lots. He stated on this particular building they have a commercial off-site billboard above the building for off site stuff. He stated this one he’s talking about they will use for everything and they would like permission to upgrade the present message board to an electronic message board with the stipulation that they could advertise all the services that come into that building. He stated if a person was to buy a lot from him, they would come up to that building to sign a contract. He stated if a person was going to rent an apartment from him they would come in that building etc. He stated anyone that wants to get paid goes in that building. He stated if he was to try to advertise somebody else’s stuff that of course would be off-premise. He stated he can’t bring his lots on premise nor can he bring the apartments on premise, so he feels like since everybody’s got to come to this spot to purchase these things, he believes he should be able to advertise it. He stated he’s asking permission to upgrade the sign to an electronic message board with the stipulation that they can only advertise the businesses that operate out of that building.

Mr. Willis asked if there were any questions by Board Members.

Mr. Willis asked Mr. Ubelhor if the sign they have now is approximately 9’ x 16’.

Mr. Ubelhor stated yes, its approximately the same sign.

Mr. Willis stated Mr. Ubelhor is going to put the new sign more or less in the exact location.

Mr. Ubelhor stated that’s exactly right, the electronic board would be where he’s got the reader board now. He stated there will be a fixed sign on there with his telephone number on the bottom. He stated the electronic part will be approximately the same size as the existing sign.

Mr. Willis asked about the rendering of the sign in their packets and if the piece of the sign where the phone number is can be changed.

Mr. Ubelhor stated he’s going to leave the main number the same. He stated they could put cellular phone numbers and things that change on the electronic board but there’s not enough room on that message board to fill it up with telephone numbers. He stated nobody cares who you are they just want to know what you have. He stated he does want the fixed telephone numbers so if people are interested in what they have to sell, they have a number to get a hold of them.

Mrs. Rector stated for Mr. Ubelhor’s information, it is prohibited for those signs to say “stop, danger, or look” or anything that would confuse traffic.

Mr. Ubelhor stated he really doesn’t want anyone to stop there; he wants them to go someplace and look at his lots. He stated that he foresees the use of the sign to put his houses that he has for sale on so people come by and see a house that is for sale and/or a lot. He stated he doesn’t want them to stop there, he wants them to go look at his lots someplace else.

Mrs. Rector stated she just wanted him to know.

Mr. Ubelhor stated that would be a good thing to put in the conditions, the things that he can’t do, because that’s not their intent.

Mr. Mottley asked if the flag will be electronic and move.

Mrs. Rector stated that the flag Mr. Mottley is referring to on the rendering is the sign. She stated it won’t have that flag on there, its going to have their information on there. She asked Mr. Ubelhor if that was correct.

Mr. Ubelhor stated yes its going to have their information on there. He stated basically he will put a picture of a house on the board and run some lettering over the top of it saying it’s a two car drive, 4 bedroom etc. He stated people are stopped at that stop light and he wants them to be able to see a little bit about it. He stated to operate these things effectively you’ve got to do a good job with the computer and there are some signs in town that are running so fast and flashing and firing they’re aggravating and you can’t even read them. He stated it’s mainly because people aren’t doing a good job with the computer. He stated this particular sign looks like a television screen and you can buy these of all calibers but in order to do a good job you’ve got to get one with good quality colors. He stated this one has 25 billion colors in order to come up like a TV screen. He stated for example, CVS – you can read the CVS reader board but when you look up the road to Walgreen’s you can hardly read it. He stated it gives you an idea how important it is to get them programmed correctly. He stated his is a little more high tech then that where he can take a picture and post it right on there like a television screen.

Mr. Willis asked for any other questions by Board Members. There being none he asked if there were any remonstrators for or against this petition. There being none he entertained a motion.

Steve Gibson made a motion findings of fact be made as follows:

- 1. The Use is deemed essential or desirable to the public convenience or welfare.
- 2. The Use is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
- 3. The Use will not be detrimental or injurious to the character of the development of the immediate neighborhood.
- 4. The Use will be replacing the existing sign.

And the application be approved in accordance with the application and plans on file with the Warrick County Area Board of Zoning Appeals per Special Use Docket Number BZA-SU-07-03 with the following conditions.

- 1. Subject to any required State or Federal Permits.
- 2. Subject to an Improvement Location Permit being obtained.
- 3. Subject to any required Building Permit form the Warrick County Building Department.
- 4. Subject to the property being in compliance at all times with the applicable zoning ordinance of Warrick County.
- 5. Subject to all public utility easements and facilities in place.
- 6. Subject to the message board being used for the advertisement of Mr. Ubelhor properties only and will not be used as a billboard for lease.

Mr. Ubelhor asked if the Board wanted to add a condition about not having “Stop, Look” etc. on the sign.

Mrs. Rector stated that it wasn’t necessary because it was prohibited.

Terry Dayvolt seconded and the motion unanimously carried.

BZA-SU-07-05 – Applicants & Owners: Delores & Steven McDevitt
Premises – Property located on the S side of Ridge Brook Ct. approximately 320’ E of the intersection formed by Ridgebrook Ct. and Pine Ridge Dr. Ohio Twp. Lot 77 Old Hickory Est. Ph. III. *7555 Ridgebrook Ct.*
Nature of Case – Applicant requests a Special Use, SU-12, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, Indiana, to allow a home occupation for a machine quilting business in an “R-1A” Single Family Dwelling Zoning District. *Advertised in the Boonville Standard on February 15, 2007*

Delores & Steven McDevitt approached the podium.

Mr. Willis asked the Executive Director for a staff report.

Sherri Rector stated they do have all the return receipts from certified mail to the adjacent property owners. She stated the applicant is requesting a Special Use for a home occupation for a machine quilting business and the applicant will have to explain to you exactly what she’s proposing to do. She stated the property is lot 77 in Old Hickory Estates III and is zoned “R-1A” which is single family dwelling and the surrounding property is all zoned the same with residences on them. She stated to remind the Board, on any approvals of a home occupation there are conditions that are in the book such as there can be no signs located on the property, no shipments of goods, no selling from the property. She stated the maximum time that it can be allowed is two years. She stated no other individuals are allowed to be employed at the home. She stated the Use can only be what it is specifically asked for and can not occupy more than 25% of the first floor area of the home and the application is in order.

Mr. Willis asked if the petitioner had anything to add to the Staff Report.

Mrs. McDevitt stated no, other than she has a letter that she sent to her neighbors that might help explain a little bit to some who may not know what long arm probing is and she thought it might be helpful if she read part of the letter. She stated for a number of months she has been very interested in the art of long arm machine quilting and have been doing a lot of research regarding this business. She stated since she has retired from teaching, quilting has become a beloved hobby that she would like to turn into a business. She stated she has always wanted a job where she could work from home and this would definitely fit into her plans. She stated she would like the upstairs bonus room of their home to be used as a quilt studio. She stated although the business would be owned by both her husband and her, she would be the only employee and she has no plans to ever have anyone else working with her. She stated if those circumstances ever changed she would relocate the business off-site. She stated for those of you who are not knowledgeable about long arm quilting machines, they are just a larger version of a home sewing machine and are mounted on a frame which allows them to move horizontally and vertically as they do their magic. She stated they do not generate noise that can be heard outside. She stated this would be a part time business and her working hours would be between 9 am and 3 pm on weekdays so the small amount of traffic it would generate on their street would more than likely be during the time that school is in session and many people are at work. She stated she only anticipates an average of 3-4 customers a week dropping off and picking up finished quilts so the additional traffic will be minimal. She stated due to the additional parking space they have on their property there should always be space for parking on our driveway rather than on the street. She stated of course there will be no signs in their yard or in the neighborhood indicating there is a business at this location. She stated nothing will change on the exterior of their home. She stated she invited questions from the neighbors which she hasn’t received any at this point.

Mr. Willis asked if there were any questions by Board Members.

Steve Gibson stated that the maximum time an SU-12 can be granted is two years. He asked Mrs. Rector if the applicant had to come back for a renewal in two years.

Mrs. Rector stated the maximum time for which the first Home Occupation may be granted is two years from the date of approval, thereafter a subsequent grant of a SU-12 for the same parcel of property for the same use shall be for such length of time as approved by the Board so yes after two years she will have to come back before the Board.

Mr. Gibson asked if after that initial two years if the Board so desired they could make it for however long they wanted to.

Mrs. Rector states yes.

Mr. Willis asked for any further questions by Board Members.

Mr. Gibson asked the petitioner if she knew it was just good for two years.

Mrs. McDevitt stated she understood.

Mr. Willis asked for any further questions by Board Members. There being none he asked for any remonstrators for or against the petition. There being none he asked for any further questions by Board Members.

Mr. Stahl asked if she knew what the percentage of the household this will be taking up.

Mrs. McDevitt stated the bonus room is approximately 400 square feet and the total square footage of the home is around 3200 square feet.

Mr. Stahl asked if there was a percentage requirement.

Mrs. Rector stated 25% of the first floor.

Mr. Willis stated she does meet that requirement. He asked if there were any other questions by Board Members.

Mrs. Rector stated since she does not wait on most of the customers when they fill out the applications, she was struck by the comment the petitioner made about people coming to her house. She stated with a home occupation, it can not involve the sale of goods on the premises so she wants to make that clear.

Mrs. McDevitt stated she would not be selling goods she would be selling a service. She stated people who quilt do the quilt tops and don’t have the machines or the facility to finish the quilt to put the backing and batting and they would bring it to me. She stated it would be a service; she is not selling anything from her home.

Mr. Willis asked for any other questions by Board Members. There being none he entertained a motion.

Eric Stahl made a motion finding of facts be made as follows:

1. The Use is deemed essential and desirable for the public convenience or welfare.
2. The Use is in harmony with the various elements, objects of the land use plan of Warrick County.
3. The Use will not be detrimental or injurious to the character of the development of the immediate neighborhood.
4. The Use will not change the look of the residence.

And; the Applicant be approved in accordance with the application and plans on file with the Warrick County Area Board of Zoning Appeals per Special Use Docket Number BZA-SU-07-05 with the following conditions:

1. No identifying or business sign shall be erected or placed on any site for which the SU-12 has been granted by the Board of Zoning Appeals.
2. Except for the shipment and receipt of goods, products or items necessary for the SU-12, the use shall not be visible from the exterior of the premises.
3. The maximum time for which the first SU-12 may be granted is two years from the date of approval
4. No person or persons may be employed in the SU-12 home occupation at the site other than the residents of the site for which the SU-12 is granted.
5. The use may not be varied from the specified home occupation identified by the applicant for whom it is granted.

6. Subject to Special Use SU-12 granted to allow a home occupation of a machine quilting business not occupying more than 25% of the first floor area.
7. The Use does not go with the real estate and should the applicant no longer be the occupants, the use is no longer permitted.
8. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.

Don Mottley seconded and the motion unanimously carried.

Mrs. Rector stated that they would have her approval in the office on Friday.

VARIANCES:

BZA-V-07-04- Applicant: Alvey’s Sign by John Devries, Account Executive. Owners: Peoples Trust & Savings Bank by Victor Bowden, Security Officer. **Premises** – Property located on the E side of SR 261 approximately 0’ N of the intersection formed by SR 261 and Oak Grove Rd. (S 300) Ohio Twp. Lot 1 Paradise Park Sub. 7199 Parker Dr.

Nature of Case – Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance and the Subdivision Control Ordinance in effect for Warrick County, Indiana, to allow an Improvement Location Permit to be issued for a message board to encroach in a 25’ building setback line and a 12’ Ameritech easement in a “C-1” Neighborhood Commercial Zoning District. *Advertised in the Boonville Standard on February 15, 2007*

John Devries approached the podium.

Mr. Willis asked the Executive Director for a staff report.

Mrs. Rector stated they only have 3 of the return receipts submitted. She stated the sign company does not have the white pay receipts. She stated she can not tell the Board if they were mailed.

John Devries stated that confirmed receipts were mailed to the addressees and they did not receive them all back.

Mrs. Rector stated that normally they have to have the green return receipts or the white pay receipts that have the number on it that showed that you mailed them to everyone that’s on this application. She stated she has no proof that they mailed them to anyone but three people because nothing’s been returned and the rules of procedure in the ordinance states that you have to have notice to all adjacent property owners before it can be acted on. She stated she can go ahead and give a staff report but she wants Alvey Sign to know that’s where they stand on the return receipts. She stated they did mail them out on time, it’s been 20 days but sometimes it takes three weeks. She stated they are asking for a variance to allow an Improvement Location Permit to be issued for a message board to encroach in a 12’ Ameritech Easement. She stated the property is Lot 1 in Paradise Park Subdivision and is approximately 2.8 acres zoned “C-1” Neighborhood Commercial. She stated the property to the North and East is zoned the same and is vacant. She stated the property to the South is zoned “R-1A” Single Family with residences and the property to the West is zoned Agriculture with a residence and John H. Castle Elementary School. She stated the applicant did obtain an Improvement Location Permit for a sign and when that was issued the staff was not aware that it was going to be an electronic message board. She stated they were issued a permit on August 10, 2006 and that permit showed that the sign would be located 70’ from the center line of SR 261. She stated after discussion with Richard Meyer with INDOT, he went out to that location and measured for the staff and found out the sign was only 51 feet from the center line of SR 261 and was located within the 12’ Ameritech Easement. She stated they did send a certified letter to both Alvey’s Sign Company and People’s Trust & Savings Bank informing them of this apparent problem on November 12, 2006. She stated the applicant has now received a letter from AT&T that they will consent for the sign to encroach within their easement with conditions that of course if they have to do any repairs to the lines it is to People’s Bank expense not Ameritech’s and they have the right to do any work that they want within their easement so they have no objection. She stated the Board has a copy of their letter. She stated she thinks any condition the Board adds on their approval of this application it should be subject to the conditions stated in the AT&T letter.

Mr. Devries stated when he initially put in for the permits on this, it was mishandled on their part – Alvey’s sign. He stated the employee who was responsible for that is no longer with the company and he is the one left to clear up the mess. He stated for the fact that it was never permitted as a message board and the fact that when they go out and stake a location for installation, measurements were often wrong.

The Chairman stated that they don’t have the green return receipt cards from certified mail and asked the petitioner if he had the white pay receipts from when they mailed them.

Mr. Devries stated they spent the better part of the day ripping apart the bookkeeper’s office but could not find them.

The Chairman stated that he doesn’t think the Board can act on this petition this evening without the green cards and he thinks the best thing the Board can do is to continue this to the next meeting for either the green cards to come in or for them to re-notify everybody, whatever their choice is, but he thinks that would be the best way to handle it. He stated People’s Bank has been using that sign now for two years or whenever it went in so he doesn’t think they’ll be in anymore violation a month from now then they have been in the past so he thinks the best thing is they have a motion to continue this to the next meeting.

Steve Gibson made a motion to continue BZA-V-07-04 until the March 28th meeting and allow them to get their white pay receipts or green return receipt cards.

Terry Dayvolt seconded and the motion unanimously carried.

OTHER BUSINESS:

BZA-SE-04-23 – Applicant & Owner: Warrick County School Corporation by Brad Schneider, Superintendent. Determination on Fueling Station.

Mark Neff, Attorney for the Warrick County School Corporation approached the podium and stated he has Guy Gentry with him who is the director of transportation.

Mr. Willis asked the Executive Director for a staff report.

Mrs. Rector stated on June 23, 2004, the School Corporation was granted a Special Exception approval to allow public school and or education purposes on an “A” Agricultural zoning district which is located on SR 261. She stated one of the conditions of the approval of the Special Exception was that it was subject to Article 5 Special Exceptions regarding major changes. She stated that was in the old ordinance and of course there are now Special Uses and not Special Exceptions. She stated in the ordinance that this fell under, it says the granting of a Special Exception is defined in this article for a use existing on the site, this ordinance becomes effective and is unnecessary except that major changes in layout, expansion or enlargement of a building, structure or land area shall be subject to Board review and approval as required for special exceptions. She stated the Board should have a copy of the minutes since many of the current Board members were not on the Board at that time and it was discussed that any changes that would take place such as lighting, football fields, and things like that would come back before the Board. She stated there has been a fuel tank with an awning that has been placed now on the property. She stated there were letters from adjacent property owners that the office received stating basically that they feel this is a major change to this application and should be brought back for a public hearing. She stated she put this on the agenda since it was this Board that did make the ruling on the major changes for the Board to make a determination tonight on whether it should come back before the Board at a public hearing with an amended application or that it is not a major change. She stated that’s what they’re looking at tonight, not whether it stays there or not, it is a determination whether it is a major change or not. She stated if it’s not a major change in their opinion then it stays where it is otherwise an application will be filed.

Mr. Willis asked Mr. Neff if he had anything to add.

Mr. Neff stated he wanted to add a little bit of background and information they received from some of the neighbors in the area that lie immediately to the West of the property. He stated it was a church, now it's the Warrick Education Center and West, Southwest of Castle Elementary School, neighbors are separated from their property with a fence and when they first came before the Board 3 years ago, they'll notice in the minutes that major changes were addressed and the land owners were primarily concerned with sports facilities. He stated a sport facility is not what's going on. He stated the Board granted the School Corporation use of that property for school purposes. He stated the plan is to put a diesel fuel tank, not a gasoline tank which it has been stated in the letters, a fueling tank that is not attached to any structure that sits on the ground with a 3500 gallon capacity spill overflow protection probably 40 yards or so from the nearest land owner. He stated all that has been happening so far in terms of the structure that has been built is an awning. He stated awnings were specifically addressed when they were in front of the Board 3 years ago. He stated if someone tries to use the word structure as meaning anything, then if you put up a fence or a pole, he thinks it has to have some reasonable application and reasonable, in this regard, is not at issue. He stated the Board granted an exception, now a Special Use for educational purposes. He stated this is to fill about 12 school busses once a week. He stated that's the purpose of this. He stated the neighbors have sent some letters that are quite negative; they have alleged that Mr. Schneider's a liar. He stated Mr. Schneider is not here to defend himself. He stated he's unavailable tonight but on his behalf, he would say that he does not intend to lie. He stated that as Mrs. Rector has stated before, a person has to depend on their under links, she doesn't always go to the counter and Mr. Schneider doesn't grab a shovel to dig with but he relies on people behind him and below him and he was told, as he understands it, that permits were all in shape and ready to go. He stated likewise they have tried to imply that he himself made some misrepresentations to them and for their benefit they need to know that he did not know about this structure until they brought it to their attention at the Board. He stated there was no intent on his part to lie, and no intent on Mr. Schneider's part to lie and despite what the implication is, there is no hiding trying to sneak this in any regard. He stated the implication is that this has been in the planning for years; he doesn't think this is the case. He stated if they have evidence of that fact they need to let them know but he hasn't found any that he's aware of. He stated regardless, they put up an awning that's about 200 yards to the west of the highway. He stated the neighbors call it an ugly structure but they are the ones with the fences up, they can't see it as a general rule. He stated there is nobody going to be on top of it looking into their backyards. He stated it does not increase the public use of the property in terms of public access, increasing the number of cars or any kind of traffic flow except for these 12 busses. He stated the bus usage is a separate question. He stated that everything they've got here is kind of a shotgun approach. He stated that kids are going to get sick because there's a track and bad pollution and that is not the issue before this body. He stated in fact, they are of the opinion that there is no issue. He stated they have not been cited for being in violation of anything. He stated if there is not a motion tonight, status quo remains and status quo is the School Corporation has a Special Use. He stated the Special Use says education purposes. He asked for someone to tell him where school busses are not educational purposes. He asked for someone to tell him where this is not a public entity. He stated they are a public entity the same as the Board is, they imply that the School Corporation is not public, that they're right to access to the School Board is not adequate. He stated that's what they're guaranteed by law that's what they have. He stated they may not like what happens, but the Board has an obligation to keep their word as does the School Corporation. He stated they don't believe they've done anything improper. He stated they don't believe they should even be here tonight. He stated they've come here to answer their questions and to be a good neighbor to them, to respect their wishes but they've done nothing wrong. He stated the Board cannot in good conscience call a \$3,000 awning a major structural change. He stated you can not call placement of a tank a structural change. He stated expansion of a parking lot by a concrete slab when the parking lot is at least an acre, is not a substantial change. He stated furthermore, the ordinance says education purposes and the new ordinance says not any other use. He stated he's not putting a store up there, its fuel for school busses. He stated to him it sounds like an educational purpose; if it isn't then someone is going to have to tell them it is not a school activity.

Mr. Willis stated he wanted to note for the record that his wife has worked for the Warrick County School Corporation and has been a teacher for 42 years.

Mr. Mottley stated he's the one that made the motion two years ago and he has some concerns because the Board did talk about awnings and light structures, they didn't talk about a fueling facility. He stated there is only one way in and one way out. He stated if the governor passes the full day kindergarten, there's going to be several more kids coming into this facility possibly. He stated he's also tried to find out if this fuel facility was ever addressed at a School Board meeting where the School Board would have had any input into this. He stated he knows the School Corporation wants to be a good neighbor and he believes there are other fueling facilities. He asked where the other busses fuel for the School Corporation.

Mr. Neff stated the School Corporation has a main garage on Yankeetown Highway. He stated another fuel tank sits in Castle High School parking lot and has for 12 years He stated there is also one at Tecumseh. He stated the problem with the one at Castle is they catch it on both sides. He stated they need more buildings at Castle High School. He stated that if you build more buildings it cuts down on the parking. He stated it cuts down on the parking and cuts access to the fuel tank and they have to move it. He stated that people say don't move it but increase the size of Castle High School. He stated they can't have it all the way, every way, all the time. He stated to Mr. Mottley, as for the School Board, this was an administrative decision as he understood it originally but this has been brought before the School Board and the School Board has not instructed him or Mr. Gentry to make any changes to it.

Mr. Mottley asked when it was brought before the School Board.

Mr. Neff stated it is in their letter, he believes the first time was in December if he's not mistaken. He stated the other thing about all day kindergarten, if the Board tells us what the governor's going to do and what the legislature's going to do, then give the School Corporation a year or two to act on it and they'll tell you whether they're going to put kindergarten there or not or what's going to happen, but don't cite them for something that hasn't happened, can't happen, won't happen until something happens in Indianapolis. He stated his point is do not use all day kindergarten as something they're here for tonight – they're not here for that.

Mr. Mottley stated that when they were here 2 years ago he probably would not have made that motion if he knew this was going to be a fueling facility on the property there with only one entrance in and out of that facility.

Mr. Neff stated his question is what difference does it make whether there's one entry way or five, it does not go toward them, it goes away from them, it doesn't exit by their property, it goes in the other direction. He stated number 2, it is not a fueling station, it is a diesel fuel tank with an awning to keep the bus drivers out of the weather and it will have a pump on it.

Mr. Mottley stated in the drawing that he's looking at it shows them coming in, if there's three school busses already lined up there, and they start backing up, this drawing doesn't show that they're going to be parking over in that big parking lot away from everything.

Mr. Neff asked if Mr. Mottley was afraid it was going to block that entryway in and out.

Mr. Mottley stated yes, in and out.

Mr. Neff stated he sees what he's saying and no, this is a little concrete pad that's been added to the side of the parking lot so it won't interfere with traffic flow.

Mr. Gentry stated the pictures are all accurate, they were submitted by the Homeowner's Association, by the way, and they did a good job. He stated the layout is fairly accurate and the pattern as far as the flow is probably how it will go. He stated he went through their records and they average 23,000 gallons over the last 5 years, that's the amount of fuel they run through that tank at Castle High School. He stated they have 10 busses that fuel out of that regularly once a week, sometimes twice a week depending on field trips, amount of usage etc. He stated that two of the busses are 100 gallon tanks, one bus is 90 gallon and the other busses are 60 gallon fuel tanks. He stated there are twelve other keys that other busses have that will occasionally fuel out of there but they will not be on a regular basis. He stated they try to keep their people fueling out of the different places so they can keep track. He stated he wants them pulling out of different areas. He stated if they went on a field trip or they're running a Castle route and they normally fill at the maintenance building and they've got a quick run they've got to do right after school, they may go over there and refuel. He stated that he's not hiding any pretense that there could be more than ten busses that fuel over there but as a general rule, ten will be the maximum number that will pull out of there. He stated that bus drivers do not get paid by the hour. He stated they get paid by the day. He stated they get two hours for a morning run and two hours for an afternoon run. He stated they're not going to sit in line and wait to fuel. He stated they do that after the run, they are meticulous at their time management, there will never be more than two busses waiting in a line to get fuel.

Mr. Neff asked if this will block the entryway.

Mr. Gentry stated no, he or Mr. Lacer will not allow that to happen. He stated there is the access of the Sigeco Easement that is a gravel drive that they're not really supposed to use but in an emergency situation there is another way in and out of that property to SR 261.

Mr. Mottley asked if it was going over to the substation.

Mr. Gentry stated that was correct, they can get out that way. He stated it is an easement, it is an emergency out for anybody in or out if it needed to be. He stated that they will not block the drive, Mr. Lacer won't allow that to happen and neither will he.

Mr. Neff stated one more point that this is for the public. He stated the idea that Mr. Gentry has is to monitor the consumption of the fuel better, to have a tracking methodology, to not have to go back to the County Garage on the Alcoa Highway. He stated this is for the public benefit, for public tax payer's dollars. He stated anything the Board has them do at this point is going to cost them money, going to cost tax payer's money. He stated to go back again on what Mr. Mottley said, they don't know what's going to go on with kindergarten, they've got plans to maybe build another structure, not there, not on that piece of property but will that go through, he doesn't know. He stated the Board will have to tell him if they've got the crystal ball. He stated right now they believe they're in compliance and ask the Board to leave it like it is.

Mr. Willis stated that he believes there are 2 issues here that are being commingled. He stated one is a fuel station and that's not a structure. He stated to correct him if he's wrong; it is a tank inside of a containment pen sitting on the surface and its portable, its movable. He stated that's not a structure. He stated where he thinks there may be a structure, maybe where they've tried to do a good deed in human resources to help their bus drivers from getting wet by putting up a structure that has a foundation. He stated the structure part is not part of the fueling station part. He stated he's tried to look at this thing from both sides of the paper and all four corners and he's come to the conclusion there are two items being commingled.

Mr. Mottley stated there may even be a third issue. He asked what the pictures of the concrete are.

Mr. Gentry stated that's for lighting that they've put in, two at the back of the lot then there's one up by the garage facility, at the front corner of it. He stated the diagram that they're proposing is two lights on each of the poles. He stated they're only proposing to set two of the poles at the present time which will be along the back. He stated they are directional lighting, 400 watt sodium lights that shine out towards the parking lot.

Mr. Mottley stated that was another concern back when this was discussed. He stated, for example, on another piece of property, not School Corporation property, there's ball fields and the lights are blinding when you come over this particular hill and again its not School Corporation property, but some of the residents' concerns was lighting and things.

Mr. Gentry stated he's got an illumination chart that was provided for the lighting. He stated they wanted him to put in a third pole in the back because they said it was going to be dark in that corner of the parking lot. He stated he told them they weren't going to be parking anything in that corner and that was okay at this point. He stated that that's out in front and to the side of the lights. He stated the only light that will be behind the lights will be what is reflective but everything is directional.

Mr. Willis asked if they will not be intrusive.

Mr. Gentry stated that it should not be.

Mr. Neff stated that it should not interfere with the traffic because it's going to be several hundred yards away. He stated also to Mr. Mottley, in the minutes it talks about the lighting if they decide what changes to make and attorney Shively stated that would not be a major structural change. He stated that's already been discussed and apparently decided three years ago.

Eric Stahl asked when the School Corporation took bids to do this work.

Mr. Gentry stated he received quotes.

Mr. Stahl asked if the School Board had to approve it.

Mr. Gentry stated no, the School Corporation only makes bids for projects that are \$75,000 or greater. He stated this was a small project so they actually went with quotes. He stated \$42,000 was the quote that came in. He stated he got a quote from Hinderliter and Jergensen Petroleum. He stated Jergensen was the low quote on that and it was March of 2005.

Mr. Stahl stated that in other words the School Corporation didn't consider it to be a major structure change.

Mr. Gentry stated no.

Eric Stahl asked about the lighting part of it, he asked if all the School Corporation parking lots are lighted.

Mr. Gentry stated yes, there are lights in all the parking lots. He stated not all lights are on at all the facilities. He stated where they park their busses generally are but not at all of them. He stated he's not 100% sure. He knows there are some lights on timers like at Sharon that they can have come on if they're having an event that evening but he doesn't believe they're on all the time. He stated that's another department.

Mr. Dayvolt stated the picture shows that they're already parking busses back there now.

Mr. Gentry stated that picture is actually showing Mr. Dayvolt's church busses there, that is an old photograph – its an aerial and that was the First Christian Church busses that were there and actually that's why they like that photograph because they may have one or two more busses there that have been there all along because those are Mr. Dayvolt's church's busses and those were gas busses and the School Corp's busses are diesel.

Mr. Dayvolt stated that they are diesel.

Mr. Gentry stated that he apologized, they were the same.

Mr. Willis asked for any other questions by the Board.

Mr. Dayvolt stated if the School Corporation decides to park busses there, what time they would be started in the morning.

Mr. Neff stated for a point of clarification he objected to that question because it is not the issue about the fuel tank. He stated he thinks that's irrelevant to this particular discussion. He stated to Mr. Gentry that he could answer it if he wants to.

Mr. Willis stated that they can park busses there now and start them whenever they need to.

Mr. Dayvolt stated he understands, he was just asking for information.

Mr. Willis asked if there were any other questions by the board. He stated he will listen to the Homeowner's Association or their representative. He stated he will let people talk but he doesn't want people to be redundant with what they're going to say but he will let people from the Homeowner's Association or

from remonstrators for or against this talk and we will stick by the 20 minute time limit for both for and against this determination. He asked if there was anyone there for the application. There being none he stated that the people wanting to talk against this issue need to come forward, state their name and sign the register and remember to not be redundant and there is a 20 minute time limit inclusive.

Christa Lockyear approached the podium and stated that she was representing five of the neighboring households that are immediately adjacent to this property. She stated for the record her clients are Paul and Susan Coburn, Dave and Rhonda Miller, Craig and Donna Lucas, Mark and Cheryl Rothmeier and John and Michelle Bryant. She stated there are some additional neighbors here that she does not represent so to that extent there may be some overflow. She stated she'd like to pass out some pictures and she apologizes if she's being redundant with pictures, again these are from the neighbor's prospective what they can currently see looking across their fence. She stated she understands the business is to determine whether the facilities that have been installed on the property is a major change which would then cause the School Corporation to advertise and request a public hearing on a Special Use to allow the fueling station for the busses on the property in addition to the structures that are currently there. She stated as a background she'd like you to remember the reason you have public hearings for Special Use applications to begin with; so neighbors can come in and understand what is going on the property adjacent to their residence talk to the Board about whether it may devalue their property; whether it may have significant impact on their lives and all the criteria the Board has when they determine a Special Use. She stated for that reason they would like the Board to rule that this is a major change deserving of a public hearing to determine whether this is Special Use is appropriate. She stated she would like to go to the minutes from 2004 that Attorney Neff already eluded too when the School Board presented their application to use the church property. She stated she will read a couple of quotes from the minutes. She stated this is when Attorney Neff was speaking to the Board, he stated that this is to replace the alternative school that is located on Walnut Street which is kind of packed and is falling apart. She stated that he stated there are a bunch of mobiles stuck together so hopefully this will be a nice alternative for these kids and it's a nice area for the School Corporation. She stated on page 277 of the minutes, Attorney Neff stated they are planning on doing some renovations inside but to his knowledge there has been no plan and no talk publicly about a modification of the footprint. She stated he stated he thinks right now the footprint is planning on staying the same. She stated one of her clients Dr. Miller was here at the meeting and the discussion centered on 'what if' as Attorney Neff pointed out 'it would become a football stadium or a sports facility', it wasn't the only thing that these neighbors were concerned about. She stated they're very concerned about lighting and any change that may impact their quality of life and their property values. She stated emphasis was made on the fact that not only that the ordinance requires a major change to come back in front of the Board but also they were going to bootstrap that application and the approval of that Special Use by saying in the conditions this is subject to a major change that would have to be presented and reviewed again by the Board. She stated she thinks they can argue about whether the structures that are located are a major change or even what a major change is. She stated she doesn't believe the ordinance defines major change. She stated that Webster's dictionary says major is defined as 'notable or conspicuous in effect or scope' and she'd ask each one of the Board Members to think about when they anticipate a building will be utilized as a school for children, they have children playing out in the playground, they may have busses parked back there vs. the possibility of busses pulling up right next to a homeowner's fence, park, wait in line to be fueled up, essentially a gas station right next to these people's property. She stated the Board can see they have fences; they enjoy their outdoor backyards, probably have barbecues, and have pool areas. She stated these people have a quality of life that will be significantly impacted by having a diesel fueling station approximately 30 yards from their property and that is a major change from what was represented in 2004 to this body as to what use the School Corporation was going to use this property for. She stated structurally, she thinks if you look at the pictures, this is a major change. She stated it's a structural addition to the property so she thinks that is a very basic definition of a major change. She asked what about a major change in noise level, aesthetics, a major change in use of the land, a major change in land area that the School Corporation is utilizing. She stated again in 2004 they were looking only at existing buildings and existing pavement. She stated clearly the neighbors believe this is a major change and feel strongly enough about it to have presented the issue to the School Board which will hopefully still be addressed by the School Board. She stated they have written letters to the Board which she believes the Board has in their packet, and they care enough to take time out from their evenings at home knowing you're not really deciding on the merits whether this should be an appropriate Special Use but just to say look, this is a major change and its going to have major impact on their lives. She stated they ask that the Board does find that this is a major change and allow this to go to a public hearing which she submits there will be more neighbors with more evidence to the Board regarding what this Special Use involves, the health effects on the neighbors, again the value of life and their property values. She stated a denial of that public discussion is a denial of the neighbor's rights to present their case to the Board about potential devaluation of their properties and also talk about more details, are there time limits on when these busses fuel up if the Board decides its appropriate. She stated there's a whole spectrum of things that needs to be addressed by this body and by the School Corporation that merely saying this is not a major change is turning the Board's back on the issue and allowing the School Corporation to proceed without a public process. She stated accordingly they'd like the Board to find this is a major change and allow that public process to move forward.

Mr. Willis asked if there were any other remonstrators.

Paul Coburn approached the podium. He stated they have heard a number of times from the School and the School Board they want to be good neighbors. He stated that comment was made by Mr. Schneider and Mr. Gentry when we met with them and they appreciate how quickly they met with them in December when they noticed the structure being put up. He stated they also admitted that they didn't consider their properties at all. He stated he doesn't know how that statement and good neighbor goes together. He stated talking about parking the busses, the church did park the busses back there, and they were very small busses. He stated it started out as one, then there was about 4 when he thinks they were done. He stated they did not let them run back there. He stated they did not have big lights back there. He stated those busses pulled away as soon as they started back up in the morning and it was only a few days a week. He stated it was Wednesday, Saturday nights and Sundays when those busses were even used. He stated they didn't refuel back there. He stated as good neighbors, he's mowed that property that was the church's property behind his, and protected it from children who sometimes like to go back there and throw rocks at the busses. He stated that's what he considers being a good neighbor. He stated the School Board is acting like this is about money. He stated this isn't about money, it's about health. He stated they're right beside an elementary school; they're right on their property lines. He stated Mr. Gentry admitted they start these busses 10-15 minutes and run in the morning right behind the fence where their pool is at. He stated the busses are not an issue anymore because the School Corporation has already said they're not going to park the busses there so they will take them at their word that that's not going to happen and this isn't the issue. He stated the issue still is they've got these busses coming through there. He stated they say there's only going to be this many, what time of the day and night are they coming back through there. He asked if they were back there at noon or six in the morning – is that their morning refueling or are they going to be refueling at 10 o'clock at night. He stated he's got a daughter that played soccer and kids that were in band that came home at midnight, are they going to refuel then. He stated his last question which he has asked Mr. Gentry, Mr. Schneider, and the School Board and now this Board, and he knows they can't answer the question because everyone he asks shakes their head and can't believe it when he tells people they are building a refueling station behind his house, how would they like that. He stated he hasn't talked to one person who's said great – great job – they would think that would be great. He stated so that's being a good neighbor.

Mr. Willis asked if there were any other remonstrators.

Suzie Coburn approached the podium. She stated she would just like to address a couple of points that Mr. Neff made saying that their letter was derogatory. She stated she just wanted to appeal to the Board to what they've been through to this point to save the value of their property, their health and what they consider a very drastic change to the property behind us that will majorly impact them, be a nuisance to them and will affect their welfare and their convenience. She stated she believes ordinances are to support her as well as the public school system. She stated she believes the school system has many other places they can fuel without deciding to use this location and she would like to respond to the statement about accusing Mr. Schneider of lying on two occasions. She stated for one, she personally called Mr. Schnieder when she found out about the fueling station and asked him if they had proper permitting to put the fueling station there and he assured her they had all the proper permits or the project would not have been put there. She stated she would like all the people who were present at the meeting with Mr. Gentry and Mr. Schnieder to raise their hands. She asked them if Mr. Schnieder said in the meeting with all of them that he said he had all the proper permits.

The audience answered yes.

Suzie Coburn continued that she called the Warrick County Building Department and the Building Inspector who told her the proper permits were not obtained and the project was shut down. She stated she feels this is not just a structural issue, zoning ordinances address land use and this is certainly a land use issue that they, on behalf of all the neighbors present, had no idea that this property would be used for this purpose. She stated they certainly welcomed the school system buying it because they knew the school system was crowded and would probably need to add buildings and they have no objection to using this property for education, educating students. She stated they would welcome that but they feel they have the right to be represented by the Board also and for a public hearing to be held for their welfare.

David Miller approached the podium and stated that he was there when the Special Exception was granted in 2004. He stated basically they were told that if there was a significant change they would be notified. He stated they didn't know about this until they started building and he could see this awning from his house. He stated especially in the winter time the awning is very visible and he just thinks the ethics of what went on here are a little sketchy and he felt like there wasn't proper due diligence done on their School Board part to let them know what was happening. He stated they were not notified, it is an obscene structure, they can see it from their backyard and from their house so there is an issue there and it is a significant change.

Mr. Willis asked for any other remonstrators.

Joe Wells approached the podium and stated he is President of the Old Hickory Homeowner's Association and represent standing here tonight the 233 homes of Old Hickory Subdivision and he won't go over anything else that's already been said just for you to reconsider the tank itself. He stated the 3500 gallon tank that's about 30,000 pounds of fuel sitting there. He stated it's about the size of a small school bus, it is certainly not transportable very easily and should be considered part of the structure. He stated there are pictures of it in the Board's packet. He stated it will be surrounded by a fence but it is certainly a sizable tank.

Mr. Willis asked for any other remonstrators.

Craig Lucas approached the podium. He stated he guesses when he looks at what zoning is about; why they have zoning is so things like this don't happen to a homeowner. He stated when they buy a home they know they won't put a truck stop in right next to them. He stated they won't have a freight company right next to them and so diesel fumes won't engulf their backyard while their children are playing. He stated for him this is why zoning exists. He stated if in fact these things happen then why have zoning. He stated for him he's worked around diesel all his life, he was a marine for 11 years, worked on a flight line and he knows the dangers of diesel or dangers of fuel but he also knows the fumes and what that does, there's been enough studies that have come out lately that he would think every person in this room would be offended by the fact that right above this tank there is a playground and all these fumes around all these small children out on the playground running around and taking in oxygen. He stated just from the Board's heart he thinks they would reconsider this as a major change just because it's a major change to their environment.

Mr. Willis asked if Mr. Gentry or Mr. Neff would like to respond.

Mr. Neff stated he would like to respond on just a couple of points. He stated in relation to the letter and the negativity of it, he thinks the negativity sometimes comes from the way things are put down in writing. He stated he appreciates the civility they've shown tonight, very much adult like and business like and he appreciates that. He stated they haven't been booed yet so he thanks them for that. He stated but in terms of having a gas station, number one its not a gas station, number two its not a fueling station, number three it's a tank that he believes is not 3500 gallons it is 3000 gallons. He stated the 3500 gallons is referring to the overflow protection tank around it. He asked how many people don't want a gas station in their backyard. He stated number one it's not a gas station, number two it isn't an open gas station, its open to ten or twelve busses. He stated he asked Mr. Gentry so they'd all be on the same page, how many hours a day is this fuel situation going to be. He stated Mr. Gentry believes at most an hour a day. He stated that that will be the extent of the fueling. He stated it's not a lot of people coming in and out to fuel. He stated it is not an issue relating to zoning to answer Mr. Lucas's issues about what is zoning for, this is still as he recalls an agriculture zoning. He asked if in an agriculture zoning they're still using diesel powered implements when they farm fields. He stated don't they still have diesel fueling tanks on people's property or anhydrous ammonia or whatever it is in agriculture areas. He stated this is still within the compliance of what agriculture is about. He stated plus the public entities have been involved, they have given a public opportunity, the implication in regards to Mrs. Lockyear's statements about giving a public hearing, they are public tonight. He stated what they're saying is, if you don't rule in their favor you're denying them their rights. He stated that is completely different then what they're here tonight for. He stated they think that they've had their rights looked at, they've had the opportunity to speak, the vast majority of the people in the county are served by the School Corporation, their facility, their busses and so forth so they believe that they have complied and they ask no motions are necessary in their opinion. He asked that status quo remain the same because they are in compliance.

Mr. Willis stated he had a question for Mr. Neff or Mr. Gentry. He asked if there is a vapor reclaim center on this fueling tank.

Mr. Gentry stated no.

Attorney Doll asked if he had to obtain any permitting from either the Department of Environmental Management or the EPA for this container.

Mr. Gentry stated it was part of Jergensen's bid process and they were in charge of getting permits. He stated it is his understanding that a permit was not gotten, it was in their quote that they were going to obtain the permits. He stated they paid for the state permit, whatever that was, so they assumed that everything was there. He stated so when Mr. Schneider made the comment based on their bills and their claims they felt that everything was in compliance. He stated when Mr. Winge came out to check they were not in order. He stated they have been obtained at this point as far as the State. He stated he talked to Joe Richmond today and the Department of Homeland Security; the Fire Marshall for the tank and Homeland Security Buildings for the foundation.

Mr. Neff stated he didn't think anyone ever thought about Homeland Security being involved in any of these things. He stated not from the point of four or five years ago when this was initiated anyway. He stated if that's a permit then that's something that there all catching up on. He stated it hasn't always been that way.

Mr. Mottley asked if they got the permits from the local building authority before they started.

Mr. Gentry stated again, that was all left up to Mr. Richmond with Jergensen Petroleum and his understanding as of today he still does not have a county permit because he's waiting to see where they're going here in this forum. He stated he's got both state permits ready to go to the County to get that permit but he's on hold.

Mr. Neff asked Mrs. Rector if in the minutes previously it says that there is no need to get any kind of permits.

Mrs. Rector stated they do not have to get Improvement Location Permits from the Planning Commission office; they do from the Building Department and the State.

Krista Lockyear stated a point of clarification about having spoken publicly, she knows this is open to the public but this has not been advertised, it was not on the agenda as an open hearing so there are people that don't know about this going on.

Mr. Willis stated her point is well taken. He asked if there were any questions by the Board.

Steve Gibson stated he didn't have plans on being there tonight and he doesn't know a whole lot about this issue, he would either request that he would be allowed to abstain or he will make another motion to allow something else and that motion would be that they continue this until the next meeting to allow them to look at this more then what we have now.

Mr. Willis asked if anyone had a comment to Mr. Gibson's question.

Eric Stahl stated he had a problem with the idea of kids running around there breathing these fumes. He stated if he isn't mistaken the fueling station over at Castle High School is right there by the ball fields, is that not true.

Mr. Gentry stated yes.

Eric Stahl stated they’ve had band practice out there, ball practice going on there and he’s never heard of anybody getting sick or overcome by diesel fumes from the fueling facility where it’s located now. He stated it looks to him like this is going to be further away from the kids then what it is now. He stated that it doesn’t have anything to do with tonight’s issue.

Krista Lockyear requested to address that.

Mr. Willis stated no she couldn’t, her twenty minutes had elapsed. He stated he doesn’t have an issue with the fueling station. He stated the major structure comes in when they have to build a foundation to certain specifications to keep the canopy from uplifting. He stated that becomes a structure when you have to build something to keep it from collapsing or being torn off by the wind. He stated he thinks that becomes a structure at that point. He stated he’s of the opinion that he doesn’t have a problem with them putting the fueling station anywhere they want on the School Corporation’s property but when they dug the hole and put the rebar in and put the concrete in and made a foundation to support the structure and the wind load, he thinks then it became a structure. He stated that’s where he stands. He stated he thinks they’re commingling the fueling station and a structure. He stated if they had not been trying to be a good employer and protect their employees from inclement weather, he doesn’t think it would be an issue, but being as they did put a structure up, a canopy to protect the employees, he believes that’s where it’s come in at. He stated maybe he’s all wet but that’s his opinion.

Mrs. Rector stated if they come back to the Board, they’re going to come back for the use of the property, not an awning. She stated it’s not going to be to issue a permit for an awning, its going to be for what they’re using it for so the Board will have to look at the use.

Mr. Mottley stated he has to agree with Mr. Gibson, they got here and here’s the packet and they haven’t had a chance to look at it. He stated he appreciates the time spent on the EPA regulations.

Mr. Gentry stated that the homeowners provided all that.

Mr. Mottley stated he agrees with Mr. Gibson, he believes it should be continued or a make a motion for a hearing. He stated that’s his opinion.

Mrs. Rector stated if they make a motion to continue then the School Corporation also has a right to go ahead and file an application to get it back before you next month so there’s not another month they would have to wait in case the Board would decide that it would require it anyway.

Mr. Willis asked if they would file for the Special Use.

Mrs. Rector stated yes.

Mr. Dayvolt stated this property is under a Special Exception.

Mr. Doll stated it is now known as a Special Use.

Mr. Dayvolt stated the terminology has just changed.

Mr. Doll stated yes, it’s been reworded.

Mr. Dayvolt asked if this falls under the new ordinance.

Mr. Doll stated today it wouldn’t, but the new application would have to be considered under the present ordinance.

Mr. Dayvolt asked what the difference is.

Mr. Doll stated he’d have to look that up and see if there is a language difference between a Special Exception and a Special Use. He stated he’ll have to get a copy from Mrs. Rector. He stated he has the current code; he needs to see the one that was in effect for 2004.

Mr. Dayvolt stated he understands the fears of the home owners. He stated that’s what it is, fear. He stated he doesn’t think they’ve gotten down to the whole i’s dotted and t’s crossed on it yet. He stated Mr. Lucas was talking about the fuel, what parts per million, what are we looking at there as far as vapors, is there anyway they can be contained. He stated he understands the aesthetic of their property from the awning, he understands that. He stated he understands their fears about the busses being refueled and how and what time they will be refueled. He stated he thinks some of those things are things that they can work through, some of them they can’t. He stated he doesn’t know, but he just really feels like they don’t have enough information yet to really look at it in plain view because he would like to know. He stated, like the homeowner’s, he doesn’t want the kids on that playground to be inhaling fumes if it’s going to make them sick, or the kids coming out of that building, if it’s going to make them sick, the Board doesn’t want that. He stated but again too, they don’t want the School Corporation or any other person or entity not being able to put something on their property if it’s deemed that they can. He stated to the homeowners, its just like if any of them have a fireplace that has a gas log in it, they put a gas bottle outside because they don’t have natural gas. He asked if that was a danger to their children or to them, he doesn’t know. He stated a lot of people do it. He stated he thinks they need to dig a little deeper. He stated that’s his thought.

Mr. Stahl stated he doesn’t feel that the School Corporation is going to put a diesel fuel tank anyplace where kids are going to be in any danger. He stated they’ve been in this business for a long time.

Mr. Dayvolt stated that he understands that but the homeowner’s have fears.

Mr. Stahl stated he understands, they don’t want to look at that.

Mr. Dayvolt stated if it was his child, he might be asking the same questions.

Mr. Mottley stated it doesn’t have a vapor collection.

Mr. Gentry stated no, not that he’s aware of.

Mr. Mottley stated there is an issue in Warrick County; they’re in non-attainment for PM 2.5. Mr. Mottley asked if it did have that collection, would that help.

Mr. Gentry stated he’s not familiar with that collection they don’t have it on any of their tanks. He stated they are using bio-diesel which reduces particulate matter. He stated they use anywhere from 5% to 20% blend depending on what the prices are and what they bid at that particular time. He stated two years ago on five busses they ran a pilot program and it increased mileage of the busses and reduced emissions and they’re doing the full fleet now. He stated that takes care a little bit of the particulate matter.

Mr. Willis asked Mr. Gentry if the busses shut their engines off or idle when they’re sitting on the school property waiting to pick the students up ten minutes before dismissal.

Mr. Gentry stated they have a ‘no idling’ policy. He stated if a bus is pulled over on the property and are sitting for more than 3 minutes they are supposed to shut the bus off. He stated if there is inclement cold weather they can restart the engine to keep it at a comfortable level but they are not supposed to idle more than three minutes. He stated on initial warm up it may be longer than that. He stated he told the Homeowner’s Association 10-15 minutes would be the maximum time at below 32 degrees. He stated on a normal time we’re going to be just like them, again bus drivers are not paid by the hour, they’re

going to get in the bus and go. He stated but there could be up to 15 minutes idling if it's extremely cold and there's ice on the window they've got to defrost that before they pull off safely.

Mr. Willis asked what the wishes of the board are.

Steve Gibson made a motion to continue this until March 28th meeting. He stated after just getting this packet right in front of him, he realized everybody has concerns and he would like to have more time for that so he will make that in a form of a motion to continue.

Don Mottley seconded and the motion unanimously carried.

Mr. Neff asked what kind of information the Board wants as far as parts per million and so forth. He stated it's a legal product.

Mr. Doll asked if there is any literature on this particular fuel, this apparatus.

Mr. Gentry stated you could go on the internet and get whatever you want.

Mr. Neff stated that's his question. He asked if they're talking about fueling or the structure. He stated to Mr. Mottley this isn't an EPA board, so what are they supposed to bring to the Board.

Mrs. Rector stated the Board wants information that you can get on the tank that shows it will not be harmful to the neighborhood or the children at the school.

Mr. Neff stated that the tank itself will not be harmful.

Mrs. Rector stated they want information that it's in compliance, whatever information you can get.

Mr. Mottley asked if that tank where it is now anchored to the concrete slab that it sets on.

Mr. Gentry stated no.

Mr. Mottley stated that that concrete slab had to have rebar or footing enough to hold that size of tank with 3000 gallons of fuel in it.

Mr. Gentry stated correct.

Mr. Mottley stated it had to meet specifications.

Mr. Gentry stated the tank at Castle has been there for over 25 years. He stated it was originally an in-ground tank and about 12 years ago they did away with the in-ground tank because of all the other EPA things so the tank was dug out and they went with an above ground tank. He stated the present facility that they've got has been there about 12 years.

Mr. Willis stated that diesel weighs about 8 pounds to a gallon so 8 inch concrete with wire in it will hold that without any problem. He stated what he's talking about was the foundation for the structure of the canopy.

Mr. Gentry stated that's all that was required from the state.

Mr. Willis stated to answer Mr. Neff's question, he doesn't know if it would be up to him to gather any information that it would be harmful to anybody because they haven't come out with anything at the gas stations where you buy diesel fuel to say don't breathe the air here so he doesn't know what they should do in that case.

Mr. Gentry stated two years ago diesel became the only type fuel they took. He stated they don't even make gas fueled busses anymore and that's all those yellow busses do is transport kids.

Mr. Gibson stated that he made the motion and he doesn't expect anyone out there to bring him any additional information, any that they bring will be helpful, but he is going to put it upon himself to indulge and find some information that he would like to find himself. He stated whatever you bring would be helpful from both sides but on the same token he's not requesting anything specific.

Mr. Willis stated that's the way he took it. He stated he wanted to clarify it for Mr. Neff so he has a full understanding.

ATTORNEY BUSINESS

None.

EXECUTIVE DIRECTOR:

Mrs. Rector stated none.

Mr. Willis asked about the hearing officer for the house in Jacobs Subdivision.

Mrs. Rector stated they'll put it on the next agenda for the Board to see.

There being no other business Larry Willis entertained a motion to adjourn the meeting.

Steve Gibson made a motion to adjourn. Terry Dayvolt seconded and the motion unanimously carried.

The meeting adjourned at 8:05 pm.

Larry Willis, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Area Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held February 28, 2007

Sherri Rector, Executive Director & Secretary